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residing in the ceded territory, shall, unless they declare their intention to preserve their "allegiance" to Spain, be held to have adopted the "nationality" of the territory in which they reside.

These clauses make a clear distinction between citizenship under municipal law and citizenship in the sense of nationality. Nor is the distinction novel, though it may have been somewhat neglected or overlooked by writers. It was clearly indicated by Mr. Marcy, as Secretary of State, in the Koszta Case (*Wharton's Int. Law, Digest II*, § *198*). In that case there was no pretense that Koszta was a citizen of the United States, but it was maintained that as he had been decitizenized and banished by Austria there might be claimed for him, in virtue of his domicile in the United States, an American nationality. In the whole discussion Mr. Marcy carefully speaks of the "national character" and not of the "citizenship" of Koszta as the foundation of his position.

As to what bearing, if any, the possession of American nationality as distinct from American citizenship, might have upon the assertion of rights to life, liberty and property under the Constitution of the United States we do not in this place undertake to say. We wish merely to point out the fact that the learned Judge who decided the case under discussion reserved that question.

TRUSTS—NEW YORK RULE AGAINST PERPETUITIES.—In 1893 the New York Legislature amended the State Law of Uses and Trusts by a section allowing a beneficiary of a life interest who was also the absolute legal owner in remainder, to execute to his trustee a release which would thereby revest the entire legal estate in the beneficiary. The above provisions of the Law of 1893 were embodied in Section 83 of the Real Property Law (Chap. 547, Laws of 1896), and in Section 3 of the Personal Property Law (Chap. 417, Laws of 1897). These sections make any trust, whether of real or personal property, created under the laws of New York, alienable, because any beneficiary or group of beneficiaries may buy in the remainder, execute the release above mentioned, and become owner of the fee or absolute title in possession. The effect of Section 83 upon the rule against perpetuities has been explained in *Mills* v. *Mills* (50 App. Div., 221), decided in April, 1900. Real estate was devised in trust, the income to be divided among four beneficiaries and their survivors, and after the death of the last survivor the legal fee was to vest in a corporation. The Court held that this did not violate the rule against perpetuities because the property could be alienated at any time by the united action of the beneficiaries and the remainderman, as described above. In *Beardsley* v. *Hotchkiss* (96 N. Y., 214) 1884, there was a devise to a son for life, with contingent remainders to other children. It was argued that alienation was suspended because the children could not alienate to strangers, but the Court held that as the children could release to the son, and he could then convey the fee, there was no suspension whatsoever of the power of alienation.

What, then, is the effect of the principal case? There are only

two sections of the Real Property Law restricting the creation of estates in New York—§ 32 declares that every future estate shall be void which suspends the power of alienation for more than two lives in being; § 33 declares that not more than two successive legal life estates in realty shall be valid; § 33 has nothing to do with the rule against perpetuities, as it deals only with *vested alienable* estates. This must be true whether the rule is intended to prevent inalienability, or, as Prof. Gray says, is a rule directed against remote vesting (Gray on Perpetuities,) § 32, then, embodies the whole New York rule against perpetuities, and declares it to be a rule against suspending alienation. According to this rule the power of alienation cannot be suspended for more than two lives in being at the time of the creation of the estate, except that a contingent remainder in fee may be created to take effect at the termination of two lives and during the minority of a third life.

Our principal case decides that under the provisions of Section 83 all trusts may be terminated, and so the power of alienation is not suspended where the remainder is vested in a person in being who can convey his interest to the *cestuis que trustent.* The far-reaching effect of this decision upon the New York rule against perpetuities is obvious. It would seem to follow that hereafter the rule against perpetuities can be violated only when there is a contingent remainder created in favor of unborn issue, and that it will be possible to create trusts to endure for any number of lives in being if the right to the ultimate remainder is in a person or corporation which can convey to the *cestuis que trustent.* The decision, also, does away with the erroneous holdings in *Killam* v. *Allen* (52 Barb., 605), 1868, and *Williams* v. *Lands* (74 Hun, 425), 1893, which confuse the probability that property will not be alienated with inability to alienate.

BANKRUPTCY—PREFERENCE—PROOF OF REMAINDER OF CLAIM BY INNOCENT PREFERRED CREDITOR.—The supposed intention of the Bankruptcy Act of 1898 is the real and effectual equality in the distribution of the bankrupt's estate. *Lowell on Bankruptcy,* page 43. In the disposition among creditors equality is equity. *Bank* v. *Sherman* (101 U. S., 403) 1879, *Butler Co.* v. *Robbins* (151 Ill., 632) 1894, *Collier on Bankruptcy,* page 286. Hence, one of the chief purposes of the Act seems to be to prevent any one creditor from obtaining a greater percentage of his claim than any other creditors of the same class. Secs. 1 (25), 3*a*, 57*g*, 60*a*, *b*, 70.

If the debtor makes a payment at a time when he is not in fact insolvent, however soon he may afterwards become insolvent, this payment is in no sense a preference. Therefore, the fact of insolvency at the time of the payment must first be proved before the question of preference arises. *In re Alexander* (4 Am. B. R., 376), Georgia, May, 1900. *Blakey* v. *Bank* (2 Am. B. R., 459, Indiana).

But if the fact of the debtor's insolvency at that time is established, any payment by him falls under the letter at least of Sec. 60 (*a*): " if *being insolvent,* he has made a transfer of any of his